

² 5 U.S.C. § 8101 *et seq.*

travel reimbursements; and (2) whether OWCP properly found that appellant was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as presented in the prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 29, 2000 appellant, then a 39-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to lifting trays of mail at work. OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant underwent OWCP-authorized carpal tunnel release surgery for the left wrist on June 4, 2001 and right wrist on November 28, 2001. By decision dated August 28, 2002, OWCP granted appellant a schedule award for 11 percent permanent impairment of the right arm and 8 percent permanent impairment of the left arm. By decision dated October 9, 2002, OWCP terminated appellant's wage-loss compensation benefits as it determined that her modified clerk reemployment effective June 7, 2002 fairly and reasonably represented her wage-earning capacity, with no wage loss.

On October 10, 2007 OWCP expanded acceptance of appellant's claim to include bilateral epicondylitis. It authorized surgery, which was performed on October 24, 2007.

By decision dated June 19, 2008, OWCP granted appellant an additional schedule award for four percent permanent impairment of the left upper extremity and an additional six percent permanent impairment of the right upper extremity. By decision dated September 8, 2011, it granted appellant an additional award of 4 percent permanent impairment of the left upper extremity (totaling 16 percent permanent impairment of the left upper extremity), and an additional 3 percent permanent impairment of the right upper extremity (totaling 20 percent permanent impairment of the right upper extremity). Appellant returned to work sporadically until she returned to full-time modified duty on January 29, 2011.

Appellant submitted numerous medical travel refund requests, OWCP Form 957, for travel to and from her duty office and for medical services in connection with her work injury.⁴

An investigative report from the employing establishment's Office of Inspector General (OIG) analyzing appellant's medical billing payments, including transportation reimbursements, for the period January 2007 through March 2015 noted that appellant received an unusual amount in mileage reimbursement funds related to her workers' compensation claim. During the course of the investigation, it was determined that she submitted a total of 964 requests for reimbursement for transportation service dates, from December 5, 2000 through August 13, 2014, where there were no corresponding medical services, appliances, or supplies; or had overstated mileage

³ Docket No. 10-1982 (issued July 11, 2011).

⁴ The record contains medical travel refund request forms for approximately 33 dates in the period from 2008 through 2012, which appellant signed on November 4, 2008, August 7 and May 2, 2009, February 22, April 28 and November 13, 2011, and November 28, 2012.

amounts; and/or reflected travel to/from work at a postal facility. The OIG provided 33 examples with corresponding exhibits of appellant's OWCP-957 forms from 2008 through 2012 which illustrated where there were no corresponding medical claims, appliances, or supplies; overstated mileage amounts; and had traveled to/from work at a postal facility.⁵

The OIG found that the total amount of fraudulent mileage reimbursement funds appellant received was \$24,800.96 during the period December 5, 2000 through August 13, 2014. For the period from 2000 through 2012, the OIG indicated that appellant had received a total fraudulent amount of approximately \$18,357.16. From 2013 through February 2015, the OIG concluded that appellant had received an additional \$6,443.80 in reimbursement requests for which she was not entitled. The OIG found that appellant erroneously received \$282.54 in 2000; \$12.96 in 2002; \$28.08 in 2003; \$65.08 in 2006; \$484.80 in 2007; \$1,391.70 in 2008; \$3,411.10 in 2009; \$2,055.50 in 2010; \$4,743.00 in 2011; \$5,882.40 in 2012; \$3,971.40 in 2013 and \$2,474.40 in 2014.

Several exhibits were listed as included in the investigative report, but the only exhibits of record were: a copy of mileage calculations from GoogleMaps, an internet-based service, from appellant's residence to the listed medical providers or post office location from 2008 through the present; the mileage reimbursement amount per General Services Administration (GSA) website from January 1, 2004 to the current;⁶ and 33 copies of appellant's OWCP Form 957 for October 17, 2008 through October 24, 2012.⁷ The Risk Analysis Data Repositor (RADR) Healthcare Claimant Detail Medical Payment Tracking Report, and AQS ACS Bill listing were not of record.

On December 15, 2015 OWCP made a preliminary determination that appellant received a \$24,800.96 overpayment of compensation because she received travel expense reimbursements for the period December 5, 2000 through August 13, 2014 for reported inflated or fraudulent mileage. Specific dates from December 5, 2000 through August 13, 2014 and the amounts of the inflated or fraudulent mileage were listed. It found an overpayment of compensation in the amount of \$282.54 for December 5, 2000; \$12.96 for June 4, 2002; 2 dates in 2003 for total of \$28.08; 4 dates in 2006 for a total of \$65.08; 23 dates in 2007 for a total of \$484.80; 35 dates in 2008 for a total of \$1,391.70; 96 dates in 2009 for a total of \$3,411.10; 138 dates in 2010 for a total of \$2,055.50; 199 dates in 2011 for a total of \$4,743.00; 226 dates in 2012 for a total of \$5,882.40; 144 dates in 2013 for a total of \$3,971.40; and 94 dates in 2014 for a total of \$2,472.40. It found her at fault in the creation of the overpayment because she accepted payments that she knew or should have known were incorrect. Appellant was advised to complete an accompanying overpayment recovery questionnaire and submit supporting financial documents. Additionally,

⁵ The OIG subpoenaed the medical facilities and practices reflecting all consultation dates pertaining to appellant's claim and compared the subpoenaed medical documents with the refund reimbursement requests. It found that approximately 706 of appellant's submitted mileage reimbursements had no medical provider claims, appliances, or supplies associated with them.

⁶ The reimbursement rate was \$0.375 for the period January 1, 2004 to February 4, 2005; \$0.400 for the period February 4, 2005 to August 31, 2004; \$0.485 for the period September 1 to December 31, 2005; \$0.445 for the period January 1, 2006 to January 31, 2007; \$0.485 for the period February 1, 2007 to March 18, 2008; \$0.505 for the period March 19 to July 31, 2008; \$0.585 for the period August 1 to December 31, 2008; \$0.550 for the period January 1 to December 31, 2009; \$0.500 for the period January 1 to December 31, 2010; \$0.510 for the period January 1, 2011 to April 16, 2012 and \$0.555 for the period April 17, 2012 to current.

⁷ See *supra* note 4.

she was advised that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On January 9, 2016 appellant requested a prerecoupment hearing before an OWCP hearing representative regarding the issues of fault and waiver. She also noted that she had submitted legitimate travel reimbursement claims for 14 years that were reviewed, approved, and paid by OWCP. In a January 9, 2016 letter, appellant stated that she had always submitted claim forms without documentation for travel. She claimed that in 15 years, it had never been brought to her attention that she was to submit separate documentation as the documentation had always been submitted by the medical facility. Appellant indicated that she had also provided the addresses of her destination, whether it was to a medical facility or a postal facility. She stated that, due to her work injuries, which included left ulnar nerve lesion and bilateral lateral epicondylitis, she could not drive and that her husband had transported her to work since she returned to work in 2002, not 2011. Appellant stated that in 2002 she had asked an OWCP representative if she could file for travel reimbursements for her husband traveling the extra miles to transport her and was told to file the claim and see if it would be approved. As the claims had been approved for 14 years, she argued it was unjust for OWCP to now decide that the claims should not have been paid and expect her to reimburse \$24,800.96. In a January 11, 2015 letter, appellant listed her current expenses and provided copies of financial information.

A telephonic hearing before an OWCP hearing representative took place on September 15, 2016. Appellant indicated that she had severe issues with her arms and had not been able to drive for a number of years. She stated that she had returned to work in December 2011 and also had return to work dates in 2002, 2006, and 2008. Appellant stated that her husband had transported her since 2002 and he would leave his job to pick her up and take her to and from appointments. She acknowledged that she had claimed the travel to and from work with the extra trips her husband had to take to and from his work and the trips to and from her duty station as he took her to work. Appellant testified that she asked OWCP if she could bill the extra trips her husband was making on her travel claim and was told to fill out the claim and see if it was paid. She stated that she did not realize that she had been paid in error and had always listed the correct destination on her travel claims. Appellant advised that October 7, 2014 was the first time she had received instructions/guidance for filing the travel claims.⁸ She indicated that she had not knowingly accepted a payment to which she was not entitled and she was not financially able to repay the debt.

On October 11, 2016 OWCP received copies of appellant's current list of bills and expenses, bank statements, and financial information.

By decision dated November 30, 2016, an OWCP hearing representative finalized the fact and amount of the preliminary overpayment determination, as well as the finding of fault. She found that all charges for travel reimbursement must be accompanied by supporting

⁸ In response to appellant's October 7, 2014 inquiry, OWCP explained, in a November 7, 2014 letter, that unless the person is a valid transportation provider under ACS, the individual cannot be directly reimbursed. However, you may reimburse the person who provides driving assistance to your medical appointments with documentation that you attended such appointments.

documentation. The hearing representative directed recovery of the overpayment by having appellant make a monthly payment of \$200.00 until the debt was satisfied and paid in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.⁹

With respect to travel expenses for medical treatment, the regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee’s condition, and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel. Travel taken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”¹⁰

In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP’s authority is that of reasonableness.¹¹

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision.

OWCP accepted appellant’s claim for bilateral carpal tunnel syndrome and bilateral epicondylitis and paid wage-loss compensation and medical benefits, including OWCP authorized surgery. However, it found that the mileage she reported for reimbursement of travel from December 5, 2000 through August 13, 2014 was fraudulent.

An OIG investigation revealed that for the stated period, appellant had submitted numerous medical travel refund request forms. The OIG investigation claimed to have found that appellant had submitted approximately 964 signed mileage reimbursement requests for dates where there were no corresponding medical services, appliances, or supplies; had overstated mileage amounts;

⁹ 5 U.S.C. § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

¹⁰ 20 C.F.R. § 10.315(a).

¹¹ *R.L.*, Docket No. 08-0855 (issued October 6, 2008).

and/or pertained to travel to/from work at a postal facility. However, only 33 OWCP-957 forms are listed as exhibits of record along with a yearly synopsis from 2000 to 2014 totaling \$24,800.96.

It is particularly important to be able to review all 964 medical travel refund request forms which the OIG and OWCP found to be fraudulent because OWCP subsequently issued a decision finding that appellant received an overpayment of compensation resulting from these requests, for which she was at fault. OWCP found that her signature on each OWCP-957 form certified that any information she provided was true and correct. The Board finds, that only a sample of the travel reimbursement OWCP-957 forms are of record. OWCP has not fully established the existence of the total overpayment claimed in this case, nor explained the calculation methods used and their validity.¹² As such, without this crucial evidence the Board will set aside the November 30, 2016 OWCP decision and remand the case to OWCP for reconstruction of the record. OWCP shall obtain all of the OWCP-957 forms completed and signed by appellant for the claimed reimbursement period as well as a list of the dates and money appellant received for each reimbursement travel request. Following reconstruction of the record and any necessary further development, OWCP shall issue a *de novo* decision on the merits of the claim.¹³

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² *E.S.*, Docket No. 17-1041 (issued December 27, 2017); *see also C.S.*, Docket No. 14-1377 (issued June 23, 2015).

¹³ OWCP's decision shall also cite the legal authority by which the existence of an overpayment in this case is established and explain the calculation methods used and their validity.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 19, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board